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Supreme Court, U.S.
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NO. 04-1205

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2004

JAMES J. CLANCY, acting as a Private Attorney General and for himself,
PETITIONER

v.

A.T.&T. CORP., a New York Corporation; **COMCAST CORP.**, a Pennsylvania Corporation; and **COMCAST OF CALIFORNIA VII, INC.**, a Washington Corporation,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE

PETITIONER'S REPLY MEMORANDUM

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IN THE SUPREME COURT OF THE UNITED STATES

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A.T.&T. CORP., a New York Corporation; COMCAST CORP., a Pennsylvania Corporation; and COMCAST OF CALIFORNIA VII, INC., a Washington Corporation, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION 1.

PETITIONER'S REPLY MEMORANDUM

Petitioner respectfully submits this Memorandum in response to the Opposing Brief jointly filed by Respondent AT&T Corp. (hereinafter referred to as "Cable TV Operator AT&T") and Respondents Comcast Corp. and Comcast of California (hereinafter collectively referred to as "Cable TV Operator Comcast").

I. INTRODUCTION

The Petition seeks review of federal law issues arising in connection with *two* separate but related state appeals (B 168827 and B 171529), which, as the Opposition notes, are related to a third appeal (B166374, involving demurrers filed by government officials and Cable TV Programmers). However, this Petition implicates federal law issues

that are distinct from those presented in B166374, because the instant cases (B168827and B171529) [1] examine the legal obligations of Cable TV Operators under both state and federal law with respect to the transmission of *obscene* Cable TV programming. [2]

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[1]The Opposition incorrectly asserts, at p. 4, that there is "*no full record to review*." This statement is without support. In all three related appeals, Petitioner's Complaint was wrongfully dismissed *at the pleading stage, without leave to amend*. Even though the wrongful orders of dismissal *obviously prevented trial of the issues*, an "adequate" record exists for this Court to examine and decide the important procedural and substantive federal issues presented by the Petition. The record available in the related appeals (B166374, B168827, and B171529) conforms with California Rules of Court, Rule 10, which specifies that only one record need be prepared if more than one appeal is taken from a related order.

In order to address any concern that the Opposition may have raised with respect to the "adequacy" of the record, Petitioner is submitting the following: the Exhibits which were filed with the Trial Court, the Court of Appeal, and the California Supreme Court are being "Express Mailed" to the Clerk of this Court. In addition, ten (10) copies of the written "Record" is included in said shipment: nine copies for Members of the Court (one for each Justice), and 1 for the Clerk.

[2]The Opposition essentially frames a specific Question of Law for this Court to consider:

> Is the Cable TV programming alleged by the Complaint to be *obscene* merely so-called "Adult Material", or is said Cable TV programming *"per se" obscene* (on its face as a "Matter of Law"), and therefore *illegal to transmit over Cable TV*?

With respect to this Question, the facts pleaded in the Complaint mandate the conclusion that the Cable TV programming is *per se obscene*, and therefore presents the following issue:

> "Was Associate Justice Roy Herndon correct when he dissented in *Harmer v. Tonylyn Productions, et al. (The Motion Picture Film "Without A Stitch")*, 23 Cal.App.3d 941, at 946-948, App., 100 Cal.Rptr. 576 at 579 (C.A.2d. Div. 1, 1972), *rehearing den.* March 30, 1972, *hearing den.* April 26, 1972."

It is clear that Justice Herndon's position was subsequently vindicated by:

(1) *Paris Adult Theatre* [see *Paris Adult Theatre I, et al. v. Slaton*, 413 U.S. 49 (1973) (exhibition of *obscene* materials to a "consenting adult audience" is not protected by the First Amendment); and

(2) *Bloom v. California*, 16 Cal.3d 71 (1976) (upholding as Constitutional California Penal Code 311.2 (the state *obscenity* crime); deciding that the State of California has a governmental interest in regulating "public commerce" and the "commercial" distribution of obscene material, citing *Paris Adult Theatre*; and holding that the public reach of the statutes of California goes as far as the

This Court is under a Constitutional duty to ultimately decide whether the Cable TV Programming, alleged to be *obscene per se* and a *per se public nuisance* [3], is *obsene* [4],

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Constitution will permit and restrains obscenity from the flow of public intrastate commerce), and

(3) the *Busch* case [see *People ex rel. Busch v. Projection Room Theater, et al.*, 17 Cal.3d 42 (1976); *People ex rel. Busch v. Projection Room Theater, et al.*, 16 Cal.3d 350 (decided March 4, 1976, and vacated June 1, 1976); and *Busch et al. v. Projection Room Theater, et al.*, 44 Cal. App.3d 56 (1974) (under California law the exhibition of obscenity is a public nuisance, in which "harm" is presumed, and does not have to be "proved")].

Respondent Cable TV Operators, in soliciting and accepting orders for "pay-for-view" products, have implicitly represented that they sell "lawful" Cable TV programming. Any Cable TV customer (such as Petitioner) who, in response to Respondents false representations (see *infra*, at footnote 6), ordered, paid for, and received *obscene* Cable TV programming has suffered "special injury" or "injury in fact", and must be deemed to have "lost money or property" as a result of Respondents' *illegal* business practices, *because they did not get what they ordered (i.e. lawful programming)*. This rebuts the points raised in the Opposition regarding the need to prove either "special injury" (at p. 5) in order to maintain a nuisance action, or "injury in fact" and "lost money or property" occurring as a result of Respondents' acts of unfair competition (at p. 6).

[3] See *Black's Law Dictionary* (Seventh Ed.) (West Group, St. Paul, Minn., 1999), at page 1094: "**nuisance per se.** Interference so severe that it would constitute a nuisance under any circumstances; a nuisance regardless of location or circumstances of use. . . .Also termed *nuisance at law; absolute nuisance.*" See also p. 1095: "**public nuisance.** An unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property. Such a nuisance may lead to a civil injunction or criminal prosecution. – Also termed *common nuisance.*"

[4] The Complaint states causes of action for declaratory judgment, injunction, nuisance, as well as for *unlawful* business practices under California Business and Professions Code §17200 *et seq.*, California's unfair competition law, or "UCL." The UCL prohibits five separate and distinct types of wrongful conduct, each of which stands separately:

(1) "unlawful business act or practice" [The Complaint's allegations of violations of underlying *obscenity* laws constitute a *per se* violation of § 17200. *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 950 (2002); *Cel-Tech Communications, Inv. v. Los Angeles Cellular Telephone Co.*, 20 Cal.4th 163 (1999). Virtually any law or regulation – federal or state, statutory or common law– can serve as predicate for a § 17200 "unlawful" violation. *People v. E.W.A.P., Inc.*, 106 Cal.App.3d 315, 319

(1980)(involving underlying violations of state *obscenity* law). § 17200 "borrows" violations of other laws and treats them as unlawful practices independently actionable under § 17200. *Farmers Ins. Exch. v. Sup. Ct.*, 2 Cal.4th 377, 383 (1992). Business practices that violate federal laws may be redressed under § 17200. *Diaz v. Kay-Dix Ranch*, 9 Cal.App.3d 588, 591 (1970).];

(2) "unfair business act or practice"(which, unlike the first prong, uses "likelihood of deception" test);

(3) "fraudulent business act or practice"(which, unlike the first prong, uses a "likelihood of deception" test);

(4) "unfair, deceptive, untrue or misleading advertising";

(5) "any act prohibited by Bus. & Prof. C. §§ 17500-17577.5.

See William L. Stern, *Bus. And Prof. Code § 17200 Practice* (The Rutter Group, 2005), at pp. 3-2 through 3-3, Paragraph 3:14-3:15. The Opposition, at p. 6, is legally incorrect when it argues that in order to state a cause of action, the UCL requires that there be an "unfair or deceptive practice affecting members of the public." Petitioner's Complaint states a UCL action under prong 1, because it alleges "illegal" and "unlawful" acts and practices, although the Complaint also alleges "unfair" or "deceptive" practices (see discussion, *supra*, at footnote 2).

The Opposition correctly notes, at p. 6, that at the time the Complaint was filed (October 2002), the UCL "afforded standing to private plaintiffs who had not suffered any injury, to bring an action against alleged unfair or unlawful business practices as a private attorney general for injunctive relief and attorney's fees." A private plaintiff may bring a UCL action even when "the conduct alleged to constitute unfair competition violates a statute for the direct enforcement of which there is no private right of action." (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal. 4th 553, 565 [71 Cal. Rptr. 2d 731, 950 P.2d 1086].) The UCL was subsequently modified by Proposition 64, which took effect on November 3, 2004, but did not address whether it was applicable to cases filed before its effective date. Prop. 64 sought to curtail some "private attorneys" who filed "frivolous lawsuits as a means of generating attorneys' fees without creating a corresponding public benefit"... "where no client has been injured in fact" or where clients "have not used the defendant's product or services," or who "filed lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision." See Prop. 64, § 1(b),(b)(1-4).

The motivation and reasons expressing why Prop. 64 was thought necessary by its proponents, in effect, proves how *easy* it was to state a ULC cause of action when Petitioner filed his Complaint, and further proves that the Second and Third Questions propounded by the Petition must be answered in the affirmative. Questions 2 and 3 concern the Constitutional sufficiency of the California state court's review of Petitioner's Complaint, and are "date specific" regarding the point of time at which Petitioner suffered a loss of Constitutional rights because of the improper procedures employed by the state court (*i.e.* which occurred on the day the Court Constitutionally erred by dismissing the Complaint without reviewing it in its

or whether it is *merely* some type of "Adult Material" [5/] falling outside

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entirety, see discussion, *infra*, at footnote 7 and accompanying text). Because these Questions present deprivations of fundamental Constitutional Rights that *ripened and are now fully actionable regardless of Prop. 64*, resolution of these Questions are not dependent upon whether or not Prop. 64 is "retroactive." However, the Complaint complies with Prop. 64, which limits representative actions to "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition," because *the Complaint pleads facts indicating that Petitioner has suffered the requisite "injury in fact" and has "lost money" as a result of Respondent's offending conduct* (see discussion, *supra*, at footnote 2). In addition, the Complaint preserves Petitioner's right to proceed with a representative action under Prop. 64, because the Complaint (at Paragraph 80) asserts "Plaintiff has a right to file a "class action" on behalf of other paying subscribers and non-subscribers, pursuant to C.C.P. § 382. . . ." This complies with the provisions of Prop. 64 (*i.e.* "any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of § 17204 and complies with Section 382 of the Code of Civil Procedure.")

[5/] In a civil context, as distinguished from a "criminal law" context, there is a sharp distinction in the treatment between Cable TV programming that is "*per se obscene*", and programming that is "*non-obscene*" (so-called "Adult Material"). "*Per se obscene*" programming is not protected by the First Amendment, and is banned from being transmitted *via* Cable TV under federal law, and this Court must make a decision on that matter. See, *supra*, at footnote 2. *Cf.*, *United States v. Playboy Entertainment Group, Inc.* , 529 U.S. 803, 829-830 (2000) (Justice Thomas, concurring):

> Where the programming at issue in the case is obscene as this Court defined the term in *Miller v. California*, 413 U.S. 15, 24 (1973), . . . the Government is empowered by statute to sanction these broadcasts with criminal penalties. See 47 U.S.C. § 559 (1994 ed., Supp. III) ("Whoever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the United States shall be fined under title 18 or imprisoned not more than 2 years, or both").

The Opposition's invitation to this Court, at pp. 4-5, to evaluate the Petition by "assuming, *arguendo*, that the adult motion pictures being cablecast in the Los Angeles area by the respondents are 'obscene' under contemporary community standards within the meaning of *Miller v. California*, 413 U.S. 15 (1973)" has profound significance. If Respondents' conduct is: (1) deemed to violate state or federal *obscenity* law as a matter of fact, or (2) if it is *per se* "unlawful," as a matter of law, the Complaint would have to be reinstated, and Respondents would be subject to the Complaint's request for a declaratory judgment, injunction, or restitution, under either theory of declaratory judgment, nuisance or unfair competition as a matter of Law.

the prescriptions and control of federal law, as Respondent Cable TV Operators argued to the State Courts, and as the California Courts agreed and ultimately relied upon in dismissing Petitioner's Complaint without leave to amend. [6]

The Petition raises the question of whether it is Constitutionally permissible for a State Court to dismiss a Complaint "for failure to state a cause of action," without first having reviewed the Complaint *in its entirety* (that is, without reviewing the "Time and Motion Studies" and "videotapes" incorporated by reference within the Complaint, and thus without ever rendering an independent judgment concerning the true nature of the subject matter contested to be *obscene*.) [7]

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[6] See the May 14, 2003 Order Sustaining Defendant AT&T Corp.'s Demurrer Without Leave to Amend and Order of Dismissal, which stated that the demurrer was granted "for the reasons stated in AT&T Corp.'s moving papers," appearing as Document 59 of the Appendix in Lieu of Clerk's Transcript. AT&T's moving papers (appearing at Documents 46, 47, and 52) clearly misstated and seriously misconstrued federal Cable TV law, in order to shield the Cable TV Operator's *illegal* behavior.

The Comcast demurrer emphasized the issue of "standing" in its moving papers. See Point IV of Document 65 and Document 68 of the Appendix in Lieu of Clerk's Transcript. The Reporter's Transcript for September 3, 2003 reveals that the Trial Court's decision to sustain the Cable Operator's demurrer was not based upon the argument of "standing," but rather, was based upon failure to state a cause of action. See the Reporter's Transcript for September 3, 2003, stating, at page 13, lines 13-14:

> *"This is not a question of standing. I have ruled based upon the pleadings."*

Petitioner sought further clarification from the Court, at page 13, line 19:

> *"Are you holding that I do have standing?"*

To which the Court responded:

> *"No, I'm holding that I don't need to get to that. Thank you."*

[7] It was the duty of the California Courts, *at some stage*, to determine whether as a matter of law the Complaint's specifically identified subject matter was, or could be found to be, *obscene*. See *People v. Noroff*, 67 Cal.2d 791 (1967) [criminal proceedings]; that duty must now be exercised by this Court, see *Jenkins v. Georgia*, 418 U.S. 153 (1974) [post-judgment proceedings]. Because this is an *obscenity* case, the trial and appellate courts had a Constitutional *duty* to review the videotapes and time and motion studies, because they constituted part of the Complaint under the state procedure that permits an obscenity case plaintiff to "plead" such material as factual allegations "by incorporation." See *People ex rel. Busch v. Projection Room*

II. THE PETITION SHOULD BE GRANTED.

The California Courts cannot evade the controlling effect on the Complaint of: (1) *federal obscenity* laws that absolutely prohibit Cable TV Operators from transmitting *obscenity* over Cable TV, [1/] and (2) established state law precedent engrafting both substantive and procedural requirements that must be utilized in state *obscenity* cases. [2/] Contrary to what the Opposition asserts at p. 4, this Court is authorized and should grant certiorari in this case, because:

(1) The California State Courts have decided an important question of federal law that has not been, but should be settled by this Court: *Federal law* imposes *an absolute ban* on Cable TV Operators, prohibiting them from transmitting *obscene* Cable TV programming. Substantial violation of this federal law ban are serious federal matters. Respondent Cable TV Operators' failure to comply

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Theater, et al., 17 Cal.3d 42 (1976); *People ex rel. Busch v. Projection Room Theater, et al.*, 16 Cal.3d 350 (decided March 4, 1976, and vacated June 1, 1976); and *Busch et al. v. Projection Room Theater, et al.*, 44 Cal. App.3d 56 (1974).

The California Courts improperly denied Petitioner any meaningful exercise of his "right of access" to the courts, guaranteed to him by the laws of the State of California and of the United States, because they completely denied him any judicial forum in which to meaningfully litigate a legitimate dispute arising from his Cable TV provider's transmission of obscene Cable TV programming into his home. The Record below (see 2004 Cal. App. Unpub. LEXIS 925, pp. 17-19) demonstrates that the California Appellate Court refused to review the videotapes and time and motion studies, and also refused to direct that the trial court review said material, concluding:

> "The question before the trial court was whether plaintiff stated causes of action against the named defendants. If that question could be answered without reviewing the materials provided by plaintiff, we see no reason why the trial court should have been required to review them."

This improperly shielded the Cable TV Operators with absolute immunity, and wrongfully absolved the Cable TV Operators from all liability under federal and state law. Thus, State orders dismissing Petitioner's Complaint must be vacated by this Court, because they violate important federal law principles of due process, equal protection, federal and state *obscenity* law and substantive federal Cable TV law.

[1/] See 47 U.S.C. §§ 558-559, and 18 U.S.C. § 1468.

[2/] See discussion on controlling state law applicable to this case, *supra*, at footnotes 2, 3, 4, 5, 7, and 12.

with the federal obscenity laws is a matter of great import [10] (especially

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[10] Illegal business practices should not be rewarded by this Court. Currently there is no "cost" to Respondents for carrying obscene Cable TV programming – they have only monetary profits. Respondents have a heavy financial incentive to continue in their unlawful business practices. This is explained by Dennis McAlpine, an analyst at Auerbach, Pollak and Richardson, in a FRONTLINE "American Porn," 2001 interview, (visited 5/2/05 at 1:09 pm), available at: < http://www.pbs.org/wgbh/pages/frontline/shows/porn/interviews/mcalpine.html >. McAlpine offered an overview of the economics and business of the adult industry, including estimates of the revenue, as of 2001, that AT&T generated from distributing "adult" programming through its cable operations:

> McAlpine: "Typically, if you look at a cable company, they are charging the consumer $30 a month, and he's getting 50 channels or 100 channels or 200 channels. And they don't break it down from that. They have to pay a good portion of that in programming to the suppliers like CNN or Showtime, or whoever may be getting it.
>
> "The difference, when you get to the adult programming, is that New Frontier and Playboy supply the programming to the cable operator. *The cable operator receives money directly from it. He will keep 80 percent, 85 percent, 90 percent of that money for himself, and give the rest to the supplier. So for him, adult is a source of revenue, and it has no cost against it. He doesn't have to pay for the programming, but he receives the money from it. So for him, it's an incredibly profitable operation, particularly in terms of profit and margin.*" [Emphasis added.]

McAlpine stated that "the cable operator, in essence, has a monopoly on his subscriber. . . ." When asked how much would AT&T lose if it did not carry "adult" programming, McAlpine responded:

> McAlpine: *"If you look at how much money is coming in from adult, remember there's virtually no cost to AT&T for carrying it. And if he's generating $10 million, $20 million a month, that's virtually all 'found money' going into the bottom line.* So it can be a significant amount. Twenty million dollars times 12 months -- that's a lot of bread." [Emphasis added.]

Respondents are liable for violations of state consumer protection and false or misleading advertising laws, in spite of the fact that, as the Opposition notes at p. 6, the "cable television industry is highly regulated by both local authorities and the Federal Communications Commission." See *Texas v Synchronal Corp.*, 800 F.Supp. 1456 (WD Tex., 1992).

given the prominence of the Cable TV Operators involved [11]). The ultimate resolution of the nature of Respondents' business practices raised by the questions in the Petition are of National interest. [12]

(2) The California State Courts have decided an important question of federal law that is in conflict with several decisions of this Court. See *Paris Adult Theatre I, et al. v. Slaton*, 413 U.S. 49 (1973); *United States v. Orito*, 413 U.S. 139 (1973), at 141-143; *United States v. 12 200-ft. Reels of Film*, 413 U.S. 123 (1973), at 126-129; *United States v. Thirty-seven Photographs*, 402 U.S. 363 (1971), at 376-377 (opinion of White, J.); *United States v. Reidel*, 402 U.S. 351 (1971); *cf. Rowan v. Post Office Dept.*, 387 U.S. 728 (1970). A sender's "right to distribute" material is not absolute. [13]

(3) The California trial and appellate courts (including the state court of last resort) have decided an important federal question in a manner conflicting with the decision of a state court: See *Nebraska v. Harrold*, 593 N.W.2d 299 (Neb. 1999), *certiorari denied* January 24, 2000, 2000 U.S. LEXIS 921 (holding that federal cable TV law does not block enforcement of state obscenity laws), and

(4) The California trial and appellate courts (including the state court of last resort) have decided an important federal

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[11]Respondent Cable TV Operators are the largest providers of Cable TV services in the Nation. See, for example, the PBS show FRONTLINE report entitled "American Porn," which investigates in part AT&T's participation in the nationwide dissemination of pornography via Cable TV (visited 5/2/05 at 1:09 pm), available at: < http://www.pbs.org/wgbh/pages/frontline/shows/porn >.

[12]See, for example, 2001 SEC No-Act. LEXIS 240, involving the 2001 dispute between AT&T Corp. and certain of its shareholders, who proposed in December of 2000 that AT&T study the social liabilities of adding the Hot Network's pay-per-view films to its cable offerings.

[13]Conversely, the Opposition's suggestion that *Lawrence v. Texas*, 539 U.S. 558 (2003) forecloses Petitioner's claim is patently absurd. The commercial transmission by commercial vendors (such as Respondent Cable TV Operators) of *obscene* Cable TV programming, using an important channel of federal communication (such as Cable TV), is legitimately banned by federal and state law. See *supra*, at footnotes 1, 2, 3, 4, 7and 8.

question in a manner conflicting with the decision of a United States Court of Appeals: See *Time Warner Entertainment Co., L.P. v FCC*, 93 F.3d 957 (App. DC, 1996), 320 U.S. App. DC 294, *reh. en banc, den.* 105 F3d 723, (App. DC, 1997), 323 US App. DC 109. *Time Warner Entertainment* upholds the constitutionality of 47 U.S.C. § 558, *which reimposes liability on cable operators for the transmission of obscene programming.* [14/]

CONCLUSION

For all the reasons stated, Petitioner respectfully prays that this Court grant the Petition, vacate the state judgments below, reinstate Petitioner's Complaint, and issue a summary adjudication (judgment on the pleadings) regarding the *obscenity* of the contested subject matter in accordance with the law expressed by Associate Justice Roy Herndon in his dissent in *Harmer v. Tonylyn Productions, et al.* 23 Cal.App.3d 941, at 946-948, enjoining the continued transmission of the same on Cable TV, and remand the remaining issues (relating to damages, restitution, forfeiture of unlawful profits (contraband), and attorney's fees) back to the State court, or to a Federal Referee under the supervision of this Court, for discovery and trial.

Respectfully submitted,

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[14/] It is impossible to reconcile the *Time Warner Entertainment* case with the California courts' dismissal of Petitioner's Complaint against Respondent Cable TV Operators. See, in particular, *Time Warner Entertainment, supra*, 93 F.3d 957, at Section X, entitled "Obscenity Liability."

CERTIFICATE OF SERVICE

I, James J. Clancy, a member of the Bar of this Court, hereby certify that on this 5th day of May, 2005, three copies of the within:

PETITIONER'S REPLY MEMORANDUM

in the above entitled case were deposited in the U.S. Post Office with Priority Mail postage prepaid, and properly addressed to the below listed parties to the proceedings. I further certify that all parties required to be served have been served:

Clerk, Civil Filing
California Supreme Court
300 South Spring Street
Los Angeles, California 90013

Clerk, Civil Filing
California Court of Appeal
2nd Appellate District, Div. 1
300 South Spring Street
Los Angeles, California 90013

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L.A. Superior Court, N.W. Div.
6230 Sylmar Avenue
Van Nuys, California 91401

Bill Lockyer
California Attorney General
Public Inquiry Unit
P.O. Box 94425
Sacramento, California 94244-2550
Re: **Unfair Competition Case. (See Bus.& Prof. Code, §17209, and Cal. Rules of Court, Rule 15(e)(2).)**

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Attorney of Record for ***A.T.&T. Corp., a New York Corporation*** (L.A.C.Sup.Ct.No. LC062475, CoA.No.**B168827**).

The Hot Network, ***The Hot Zone***, ***Vivid Video***, ***Vivid Entertainment Group***, ***Playboy Enterprises, Inc.***, ***Christie Hefner***, ***Playboy Entertainment Group*** (as ***Doe 3***) (L.A.C.Sup.Ct.No. LC062475, CoA.No.**B166374**).

Comcast Corp., a Pennsylvania Corporation (as ***Doe 4***), and ***Comcast of California VII, Inc., a Washington Corporation*** (as ***Doe 5***) (L.A.C.Sup.Ct.No. LC062475, CoA.No.**B171529**).

Dated: **May 5, 2005**

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